QUESTION PRESENTED

The City of Yonkers, a nominal respondent in this action, will address the following question:

Whether a federal court may impose contempt sanctions when equally effective, alternative remedies are available to implement a remedial decree?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

Nos. 88-854, 88-856 and 88-870

HENRY G. SPALLONE,
Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents,

PETER CHEMA,
Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents,

NICHOLAS LONGO AND EDWARD FAGAN,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENT CITY OF YONKERS IN SUPPORT OF PETITIONERS

STATEMENT OF THE CASE

1. This action was instituted by the United States against the City of Yonkers (the "City"), the Yonkers Community Development Agency and the Yonkers Board

of Education (the "Board") in the United States District Court for the Southern District of New York on December 1, 1980. The complaint, which alleged violations of the Fourteenth Amendment to the United States Constitution, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3604(a), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, sought injunctions requiring the Board to implement a system-wide plan of desegregation and required the City and the Community Development Agency to adopt a housing remedy plan locating public and subsidized housing throughout the City of Yonkers. The Yonkers Branch—National Association for the Advancement of Colored People, *et al.*, was permitted to intervene as a party plaintiff. See *City of Yonkers* v. *United States*, Petition for Certiorari, No. 87-1686 at 2.[1]

On November 20, 1985, the district court issued a liability opinion, *United States* v. *Yonkers Bd. of Educ.*, 624 F. Supp. 1276 (S.D.N.Y. 1985), finding, *inter alia*, that the City had violated the Equal Protection Clause of the Fourteenth Amendment and the Fair Housing Act in its selection of sites for public and subsidized housing.[2] Following its finding of liability, the court issued a series of remedial orders, including a requirement that 200 units of public housing be built on the east side of Yonkers. See *United States* v. *Yonkers Bd. of Educ.*, 635 F. Supp. 1538 (S.D.N.Y. 1986). On December 28, 1987, the United States Court of Appeals for the Second Circuit unanimously affirmed the judgment of the district court

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[1] The petition for a writ of certiorari in No. 87-1686, raising, *inter alia*, the issue of the City's liability for intentional discrimination based on its placement of public housing, was denied by this Court. 108 S.Ct. 2821 (1988).

[2] The district court also found that the City and the Board had violated Title IV of the Civil Rights Act and the Equal Protection Clause by maintaining and operating a segregated school district.

"in all respects." *United States* v. *Yonkers Bd. of Educ.*, 837 F.2d 1181, 1239 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 2821 (1988). This Court denied the City's petition for a writ of certiorari on June 13, 1988. 108 S.Ct. 2821 (1988).

2. On January 28, 1988, the Yonkers City Council approved a remedial consent decree (the "First Remedial Consent Decree") setting forth the actions that the City would take "in connection with [the] consensual implementation" of the district court's Housing Remedy Order. See *Spallone* v. *United States*, No. 88-854, Pet. App. A1791 ("Spallone Pet. App."). With respect to the City's obligation to build 200 units of public housing in eastern Yonkers (the "short-term plan"), the consent decree acknowledged the City's commitment to build the units, identified seven sites for construction and set a timetable for specific steps to be taken toward construction. *Id.*

In addition, the consent decree acknowledged that a "long-term plan" which provided for private development of 800 units of assisted housing was "an appropriate target." Spallone Pet. App. A1821. In furtherance of this goal, the City agreed to adopt legislation that would require 20 percent of all new multi-family housing to be set aside for low- and middle-income families. The City also agreed to provide for certain incentives, such as zoning changes, variances, special exemptions and tax abatements, necessary to attract private investment in developing the assisted housing. *Id.* at A1841.

On June 13, 1988, after the parties had failed to reach agreement on the specific components of a long-term plan, the Court entered an order, which set forth detailed provisions for the development of an assisted long-term housing plan. See Spallone Pet. App. A164k ("Long Term Plan Order"). One week later, the district court asked the City Council to pass a resolution expressing its willingness to adopt the zoning ordinance once it had been drafted by the City's experts.

When the City Council failed to pass such a resolution, the district court, on June 29, 1988, directed plaintiffs to submit a draft order that would require the City to take "specific implementing action pursuant to a prescribed time-table, on penalty of a finding of contempt and the imposition of bankrupting fines." *City of Yonkers* v. *United States*, No. 88-855, Pet. App. 59 ("Yonkers Pet. App."). At the July 12 hearing on the proposed order drafted by the NAACP and the United States, the City urged the court not to force a confrontation with the Council but instead simply to enter an order deeming the necessary legislation to have been adopted by the Council on behalf of the City. The district court, however, declined to do this. Instead, the court proposed the creation of an independent "Yonkers Affordable Housing Commission" to exercise all of the City's authority with respect to implementation of the housing remedy order. The City, at that point, opposed the creation of such a Commission because the narrow legislative action necessary to initiate implementation of a long-term plan could have been deemed enacted by the district court without divesting the City of all authority over housing issues.

At the district court hearing on the proposal to create the Affordable Housing Commission, the NAACP supported the proposal, but the United States objected, arguing that the City should be directed to adopt implementing legislation immediately or to show cause why it should not be held in contempt. The City again urged the district court not to punish the City but to move forward in the most efficient manner by simply utilizing its own remedial authority to implement the Long Term Plan Order directly.

The district court, however, made no finding concerning the efficacy of any alternative to contempt sanctions. Instead, it adopted the recommendation of the United States and immediately incorporated it into an order. The order directed the City to "enact, on or before August

1, 1988, the legislative package relating to the long-term plan as described in" the consent decree and Long Term Plan Order. Spallone Pet. App. A161j. Failure to do so would require the City and the individual members of the City Council to appear the next day (August 2) and show cause why they should not be held in contempt of court.

The City Council is the City of Yonkers' sole governing authority. The Council consists of seven members, six of whom are elected to represent specific districts and the mayor, who is elected on an at-large basis. The chief executive official, the City Manager, serves at the pleasure of the Council. Spallone Pet. App. A30a. Other administrative and executive officials of the City serve at the pleasure of the City Manager or in accordance with state civil service requirements.

On August 1, 1988, the City Council by a 4-3 vote defeated the resolution of intent that would have set in motion the process of adopting, under New York law, the zoning legislation necessary to implement the court's Long Term Plan Order. The next day the City and the four members of the City Council who voted against the resolution were adjudicated in civil contempt by the district court.[3]

As outlined in its July 26, 1988 order, the court imposed on the City a fine of $100 per day, which would be doubled each day until the City complied with the court's order to enact legislation. Under the terms of that order, the City would be subject to cumulative fines that reached $10,000 by day 7, $1,000,000 by day 14, $200 million by day 21 and $26 billion by day 28. Pursuant to this schedule, the City's annual budget would have been ex-

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[3] One council member, Spallone, who had voted against the resolution was not represented by counsel at the August 2 hearing. He was allowed a continuance to obtain counsel and was adjudged in contempt on August 4, 1988, and fined retroactively to August 2.

ceeded by day 22. The court also imposed a fine of $500 per day against each member of the City Council who had voted against the resolution and ordered each council member who did not vote in favor of the legislation within 10 days to be jailed.

3. On August 9, 1988, the United States Court of Appeals for the Second Circuit granted a stay of the sanctions against the City and individual council members, pending expedited appeal of the contempt sanctions. On August 26, 1988, the court of appeals affirmed the district court's order with respect to the individual council members and affirmed, with one modification, the order with respect to the City. The court first held that the district court did not abuse its discretion in proceeding with contempt sanctions, rather than using its authority either to adopt the necessary ordinances or to establish the Affordable Housing Commission. Spallone Pet. App. A24a. The Second Circuit also held that the district court did not err or abuse its discretion in choosing to impose a contempt sanction against the City as well as the City Council. The court stated that "[f]or purposes of taking official governmental action, the City of Yonkers is the City Council and vice versa." *Id.* at A30a. Thus, "the City, along with the defiant council members, may be subject to civil contempt sanctions." *Id.*

Finally, the court of appeals also rejected the City's contention that the amount of the fines imposed was excessive and a violation of the Due Process Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. However, the court of appeals concluded that, "[a]t some point . . ., the doubling [of the fine on a daily basis] reaches unreasonable proportions." Spallone Pet. App. A34a. The court thus found that "the doubling exceeds the bounds of the District Court's discretion when the level of each day's fine exceeds $1 million." *Id.* Accordingly, the court modified the district court's order so that "the fine shall be $1 million per day

on day 15 and $1 million per day for every subsequent day of noncompliance." *Id.*

On September 1, 1988, this Court granted applications of the four individual council members for a stay of the contempt citations against them individually pending timely filing and disposition of a petition for a writ of certiorari. 57 U.S.L.W. 3183. Accordingly, the stay removed the threat of imminent imprisonment of the four individual council members and also ended the imposition of daily fines against them. The application of the City for a similar stay was denied, 57 U.S.L.W. 3183, and the City continued to pay fines until a majority of the members of the Council was willing to vote to bring the City into compliance with the district court's order.

That vote occurred eight days later. On September 9, two of the council members changed their votes against the resolution, allowing the Council, by a 5 to 2 margin, to purge the City of contempt by adopting the requisite resolution. At that time, the City had paid approximately $800,000.00 to the United States in contempt citations and was on the verge of discontinuing, or cutting back, vital City services. In fact, City officials were contemplating filing under Chapter 9 of the Bankruptcy Code.[4]

The individual council members, who had been and continued to be represented separately from the City, filed petitions for writs of certiorari raising, *inter alia*, the issues of whether the district court erred in using its contempt power when less drastic means were available and whether, in any event, the district court had violated their right to legislative immunity or their right to free

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[4] The original August 2 order adjudicating the City in contempt provides that any resumption of contumacious conduct will result in renewed fines "at the level at which the fines had previously ceased" —$1 million per day. Yonkers Pet. App. 67. On September 14, the district court reiterated that any subsequent refusal of the Council to comply with *any* of its orders would result in the resumption of contempt fines against the City at this $1 million per day level.

speech. On March 6, 1989, this Court granted petitioners' separate petitions and consolidated the cases for argument and disposition. Also on March 6, 1989, this Court denied the City's petition for a writ of certiorari. Accordingly, the City remains in this case as a nominal respondent.

INTRODUCTION AND SUMMARY OF ARGUMENT

Ordinarily, the City of Yonkers and its City Council members collectively speak with one voice and pursue identical interests, but they always remain separate legal entities. The fact that the City is represented separately from the Council members in this proceeding is revealing; it reflects the conflict of interests implicated by the entry of contempt by the district court against both the City and the individual Council members.

Because of this Court's treatment of the City's petition for a writ of certiorari, the City is placed in an awkward position in these consolidated proceedings. It has lost hundreds of thousands of dollars because of the conduct of certain individual Council members, which it was essentially helpless to prevent or to stop. At any point in time, the City could again be exposed to bankrupting fines as the district court and the Council members spar over the meaning and import of the consent decree. Indeed, if this Court holds that the members are individually immune from contempt, then the City's position as a pawn in the dispute between the Council and the district court becomes even more precarious.

On the other hand, it is now clear that, as a matter of law, the City must bear the responsibility for the official acts of the Council members. That is the unmistakable import of the Second Circuit's decision and the denial by this Court of the City's separate petition, even during the pendency of the individual Council members' cases before the Court. In this regard the City is not unmindful that disaster for the City as a corporate entity ultimately was avoided because the prospect of savage cuts

in municipal services and bankruptcy were sufficiently unpalatable politically that two Council members switched their votes and brought the City into compliance with the district court's order. At the same time, however, two Council members were content, under the protection of a stay, and therefore personal immunity, to continue to disobey the district court.

Accordingly, the City in a very real sense has a Sword of Damocles over its head. The possibility of disputes in the future between the City Council and the district court is a very real one. As long as the district court is willing, at the insistence of the United States, to enter orders aimed more at forcing personal compliance with the court's authority than at remedying the constitutional violations the court has found, then confrontation will continue to be the standard mode of operation. And the City will face the prospect that, because of personal, political and institutional concerns, the Council members will act to place the City in contempt.

This problem has a solution and it is one that is wholly consistent with the law of contempt. If the district court employed contempt as a last resort, and only after all other remedial measures had failed to achieve desegregation, then the City would be spared. Not only does such an approach minimize the risk that the fourth largest city in the State of New York will be placed in financial chaos in the future if the Council members and the court find themselves at odds, but it also conforms to the clear equitable limitations upon the proper exercise of the contempt power, which this Court already has announced.

It is well-established that a court should not impose contempt sanctions unless they are "[t]he least possible power adequate to the end proposed." *Shillitani* v. *United States*, 384 U.S. 364, 371 (1966) (quoting *Anderson* v. *Dunn*, 19 U.S. 93 (6 Wheat.), 105 (1821)). In this case, at least two less destructive, equally effective remedial alternatives to the use of contempt sanctions were avail-

able to the district court: (a) the district court could have exercised its power under Fed. R. Civ. P. 70 to deem enacted the legislation it sought to compel the City to enact, or (b) the court could have established a Housing Commission with authority to act in the Council's stead in connection with public housing related matters. There is no finding on the record that either of these alternatives was in any way inadequate or would have been less effective in achieving the goals of the remedial decree. Instead, the district court prematurely resorted to contempt sanctions and thus unnecessarily precipitated a financial crisis for the City and, in the long run, probably delayed significantly the implementation of the short- and long-term remedial plans. The City urges the Court to hold that the district court's failure to employ existing and available alternative remedies before placing the City and Council members in contempt constituted an abuse of discretion.

ARGUMENT

As an initial matter, it is important to reiterate that the City of Yonkers is an entity separate and distinct from the individual City Council members. This distinction has been apparent since the contempt sanctions initially were threatened; since then, the City's interests often have diverged from the interests and agendas of individual Council members. Nevertheless, these differences are not currently at issue before this Court because the Court declined to review the issues raised in the City's petition for a writ of certiorari.

The City's sole remaining interest in this case lies in this Court's determination of when contempt sanctions generally will be appropriate to compel action in furtherance of future orders of the district court. Given the district court's statement on September 14, 1988—that subsequent refusals of the Council to obey *any* of its orders would result in the resumption of contempt fines against the City at the $1 million per day level—the district court

likely will resort to the use of its contempt power, in the future. Moreover, if this Court extends legislative immunity to individual members of the City Council, one disincentive to disobeying an order of the district court will be lifted. From the City's perspective, therefore, it is crucial that the Court hold that the City can be punished with contempt for the immunized acts of Council members *only* if the district court first correctly concludes that no less drastic means exist which are adequate to achieve the court's objectives.[5] In this case, the district court erred by resorting prematurely to the use of its contempt power rather than exercising its authority under Fed. R. Civ. P. 70 or, alternatively, establishing a Housing Commission.

I. Contempt Sanctions Should Be Used Only When No Less Intrusive Remedial Power Is Available.

The propriety of the district court's order directing the City Council to adopt legislation authorizing implementation of the long-term plan's requirements must be assessed against the basic principles of federal court remedial power. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971); *Milliken* v. *Bradley*, 418 U.S. 717 (1974). Although "the scope of the district court's equitable powers to remedy past wrongs is broad," flexibility rather than rigidity defines the essence of equity jurisdiction and power. *Swann*, 402 U.S. at 15. The most severe of the equity powers, of course, is the imposition of contempt sanctions. Because the procedural protections for civil contempt are limited, it is well-settled that a court in exercising its equitable authority

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[5] That issue is subsumed within the question presented by the individual Council members concerning the availability of alternative remedies as a limitation on the propriety of the district court's decision to impose contempt sanctions on them. On this issue at least, the City's and Council members' positions are the same. With respect to the other issues raised by the individual Council members, the City takes no position.

must exercise "[t]he least possible power adequate to the end proposed," *Shillitani* v. *United States*, 384 U.S. 364, 371 (1966) (quoting *Anderson* v. *Dunn*, 19 U.S. 93 (6 Wheat.), 105 (1821)). See *In re Michael*, 326 U.S. 224, 227 (1945) (discussing limited procedural protections for civil contempt). Thus, the district court in deciding whether to impose contempt must "consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." *United States* v. *United Mine Workers*, 330 U.S. 258, 304 (1947).

Under these standards the validity of the July 26 Order cannot be analyzed solely in terms of whether there was contumacious conduct. That much can be conceded. Instead, the validity of the order must be examined by reference to what effective alternatives were available to the district court at the time the court held the City and individual members in contempt, and what less destructive power was available to accomplish its concededly valid goal. See generally *United States* v. *Paradise*, 480 U.S. 149 (1987) (fines do not fulfill Court's responsibility to eliminate effects of past discrimination, nor do they compensate plaintiffs); *Sheet Metal Workers* v. *EEOC*, 478 U.S. 421, 486 (1986) (court should consider the "efficacy of alternative remedies") (Powell, J., concurring in part and concurring in the judgment).

II. The District Court Erred By Using Its Contempt Power Rather Than Exercising Its Power Under Fed. R. Civ. P. 70 Or Creating A Housing Commission.

1. Prior to the entry of the July 26 Order, the City urged the district court to use its equitable authority, embodied in Fed. R. Civ. P. 70, to deem the authorizing legislation adopted as if duly enacted by the City Council. This was not a novel suggestion. In the district court's original Housing Remedy Order of May 28, 1986, the district court gave the City 30 days to select sites

for public housing, failing which certain sites would be "deemed" to have been selected by the City. The district court also has directed the City Council to adopt a Housing Assistance Plan ("HAP"), failing which the district court would adopt on the City's behalf a HAP for submission to the Department of Housing and Urban Development. These aspects of the district court's Housing Remedy Order have been affirmed. *United States* v. *Yonkers Bd. of Educ.*, 837 F.2d 1181, 1237 (2d Cir. 1987), *cert. denied*, 108 S.Ct. 2821 (1988). Thus, there was no basis to doubt that the district court could have deemed the resolution enacted and proceeded with implementation of the long-term plan.

The City does not—and could not—dispute that the district court must be able to enforce its lawful orders. Plainly, if municipal "authorities fail in their affirmative obligations . . . judicial authority may be invoked." *Swann*, 402 U.S. at 15. However, in an extraordinary case such as this, the use of contempt power, designed to force individual members of the City Council to vote affirmatively for the adoption of legislation was an abuse of discretion where the court had before it an entirely suitable, indeed proven, alternative: the use of its Rule 70 powers. At a minimum, the district court should be obligated to explain why other available methods of resolving the impasse are not feasible before imposing bankrupting fines on a municipality.[6]

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[6] The City understands the district court's frustration in attempting to implement, without the active assistance of the Council, a remedy for the constitutional violations it has found. Nevertheless, nothing is gained by creating needless conflicts on matters that do not materially advance the goal of desegregating the City. Certainly, no one can seriously contend that the public spectacle of last summer created by the contempt order did anything to advance the remedial goals of the district court. It is therefore vital to the successful implementation of the short- and long-term plans that the court act with discretion and simply do what is necessary to implement the plans without regard to any personal animosity that may exist.

2. The district court also had available another, more comprehensive, but nevertheless less financially devastating alternative to the invocation of its contempt power: it could have appointed a "commission" to take over the City Council's functions in implementing the housing remedy. That solution was raised by the district court, on its own initiative, on July 12, and then again on July 26, 1988. See *supra*, 4-5. The court asked the parties to offer their comments on the possibility of appointing a Yonkers Affordable Housing Commission ("Commission") to take over the functions of the City Council as they relate to the implementation of the Housing Remedy Orders. On July 12, the district court read into the record a description of the powers and responsibilities of the Commission and invited comment by all parties on its proposal. After receiving comment from the parties, the district court on July 28 circulated its own proposed Order, and once again invited comment by all parties for the August 2, 1988, contempt hearing. But, inexplicably, on August 2, the court did not even entertain discussion of the Commission proposal. Instead, it proceeded to hold the City and four of its Council members in contempt of the July 26 Order.

During the course of the proceedings in this case, the City has taken seemingly inconsistent positions with respect to the Affordable Housing Commission. Those inconsistencies, however, can be explained. Initially, the City opposed the planned creation of the Commission on the ground that deeming the necessary legislation to have been enacted was a completely effective solution to the immediate remedial problem. Thus, there was no need to circumvent the City Council process in *all* respects. The City believed that such a position was strongly supported by basic federalism limitations upon a district court's equitable authority. See *Rizzo* v. *Goode*, 423 U.S. 362 (1976). Only if the district court found that removal of the City Council was absolutely necessary to permit

timely implementation of the remedial decrees could such an extraordinary step be taken.

After the City learned that the only alternative to the Commission that the district court would entertain was contempt, and the City was confronted with bankrupting fines, the City's willingness to accept a Commission increased significantly. Given the alternative of being forced into bankruptcy or having to accept a modification of its governmental structure, the City opted for the latter choice. Nevertheless, the City continued to maintain that deeming the legislation to have been enacted was the most appropriate remedial solution to the problem.

The City's position now is that the Commission remains a possible solution to future problems. But it is not a solution that this Court needs to consider at this time. Now that the immediate crisis has ended and implementation of the district court's remedial orders is moving apace, there is no reason to divest the City Council of its legislative functions. The point of discussing the Commission is simply to show that the district court had available to it alternatives to contempt, which were less destructive to the City but more effective in implementing the district court's remedial decree. In declining either to adopt one of those alternatives or to explain why they were inadequate, the district court abused its discretion by ordering contempt sanctions to be imposed.

III. The District Court's Premature Use Of Its Contempt Power Was Not Justified Simply Because It Purported To Enforce A Consent Decree.

The court of appeals rejected these arguments by observing that the contempt sanctions were imposed by the district court to enforce a consent decree. Under this reasoning the contempt sanction was narrowly tailored because it responded only to disobedience to a commitment previously entered into by the Council and the City. But the consent decree adds nothing to the case. There

is no question that the district court had equitable authority to order the City Council to take the necessary steps to implement its desegregation decree and remedial orders. If the Council members had refused to comply with such an order, then the question of how to implement the desegregation decree in the face of their recalcitrance would have been precisely the same issue the district court resolved here and the restrictions upon the district court's use of equitable authority would have been the same.

The contractual aspects of a consent decree simply do not expand the district court's equitable power. The City did not agree in the decree to allow the district court to hold it in contempt as a remedy for the decree's breach. Thus, all a breach of that agreement means is that the City loses the benefit of the bargain it has struck. It in no way confers upon the district court some additional authority to use its contempt powers to enforce the decree.

In fact, by suggesting that civil contempt sanctions are somehow more appropriate for enforcing consent decrees than judgments entered following contested proceedings, the court of appeals' logic creates a disincentive for any litigant to enter into a consent decree. That is particularly true in cases involving structural litigation, such as housing and school desegregation issues, where the remedial phase of the litigation is likely to be lengthy and, in many instances, contested.

Moreover, the reasoning of the appellate court ignores the well-established proposition that civil contempt sanctions are not intended to provide vindication of the district court's authority:

> Criminal contempt sanctions are punitive in nature and are imposed to vindicate the authority of the court. *United States* v. *United Mine Workers*, 330 U.S. 258 (1947). On the other hand, sanctions in

> civil contempt proceedings may be employed "for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained."

Id. at 303-304 (citations omitted); *Sheet Metal Workers* v. *EEOC*, 478 U.S. at 421, 443 (1986). In *Sheet Metal Workers*, this Court affirmed sanctions for civil contempt which created a training fund for apprentices and the appointment of an administrator because the sanctions compensated the victims of the union's discriminatory conduct. Here, by contrast, the fines imposed against the City were of such a magnitude that they were unquestionably punitive; they punished the City, its employees, citizens and bondholders (which was precisely what the United States asked the court to do) for the refusal of four Council members to comply with the court's order. Moreover, the payment of the fines themselves had no remedial purpose connected to the long-term housing plan, as embodied in the consent agreement. *United States* v. *Paradise*, 480 U.S. 149 (1987) (enforcing consent decree with affirmative action requirements instead of contempt fines); *United States* v. *Yonkers Bd. of Educ.*, 837 F.2d at 1237, *cert. denied*, 108 S.Ct. 2821 (1988). Accordingly, the district court had no basis for threatening to bankrupt the City simply for breaching a contract. Remedies for that breach remain subject to the same equitable principles restricting the court's use of contempt only as a last resort.

In sum, the district court erred by resorting prematurely to the use of contempt sanctions. This kind of error could become an especially acute problem in the future if the Court holds that individual Council members cannot be held in contempt for their official acts. Given such immunity, the likelihood that Council members would choose, for political, personal or other reasons, to defy orders of the district court might increase, leaving the City in a vulnerable position which it is power-

less to avert. Under these circumstances, the City urges the Court to decide this case on the narrowest ground available, *viz.*, that the district court abused its discretion by failing to consider fully whether any feasible and less onerous remedial measures existed before employing the power of contempt.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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